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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/644,551	08/20/2003	Lisa Schmitt	P 1079.13001	6636
30615 7590 11/26/2007 BIRDWELL & JANKE, LLP 1100 SW SIXTH AVENUE SUITE 1400 PORTLAND, OR 97204			EXAMINER BUI, LUAN KIM	
			ART UNIT 3728	PAPER NUMBER
			MAIL DATE 11/26/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/644,551

Applicant(s)

SCHMITT, LISA

Examiner

Luan K. Bui

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-9 and 16-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-9 and 16-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Continued Prosecution Application***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/29/2007/2007 has been entered.

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3-6 and 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Spreen (1,688,887) in view of Fraenkel (6,311,500) and Shepherd (2,863,305) or Hughes (5,520,278). Spreen discloses in the embodiment of Figure 4, a storage container (11) for forming ice blocks comprising a plurality of compartments formed by removable partitions (17) defining respective maximum filling elevations thereof (top edges of the compartments) in a stable orientation of the container and the compartments having respective opening configured to receive a substance in a liquid state. Spreen also discloses the other claimed limitations except for the compartments comprise indicia indicating the position of at least one fill level below the maximum filling elevation.

Fraenkel teaches a storage container (10, 20, 100) for forming ice blocks comprising a plurality of compartments (12, 22) defining respective maximum filling elevations thereof (top edges of the compartments) in a stable orientation of the container. Fraenkel further discloses each compartment may not be filled to the top but rather about six percent of the compartment may be left empty to allow the water in the compartment to expand during freezing (column 2, lines 45-48) which is considered equivalent to the at least one fill level is at a level below the respective maximum filling elevation. Shepherd shows a transparent bag (11) having indicia (12) indicating the position of at least one fill level of water (14) into the bag. Hughes shows a measuring cup/container (10, 18) comprising a compartment having a top edge/maximum filling level and at least one indicia indicating the position of at least one fill level below the maximum filling level.

It would have been obvious to one having ordinary skill in the art in view of Fraenkel and Shepherd or Hughes to modify the container of Spreen so each compartment includes at least one fill level disposed below the maximum filling elevation as taught by Fraenkel so as to allow the liquid state in the compartment to expand during freezing and the at least one fill level comprises indicia indicating the position of the at least one fill level as taught by Shepherd or Hughes to provide more convenience for the user when filling the compartments.

As to claims 3 and 4, Fraenkel discloses the container formed from a transparent plastic material and the compartments are integrally molded with the container.

As to claim 16, Hughes shows more than one indicia indicating the positions of fill levels.

3. Claims 7-9 and 21-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1 and 16 above, and further in view of Andress et al. (5,356,026; hereinafter Andress'026). To the extent that Spreen further fails to show multiple instances of the container being stackable and each of the multiple instances of the container includes a lid being adapted to snap-fit onto the container, Andress'026 suggests a container assembly (10) comprising a container (12) and a lid (11) adapted to snap-fit (52, 55, 60, 61). Andress'026 further suggests the container includes a bottom surface (25-27) complementary to the lid (13, 14) so that multiple instances of the container with the lid fitted thereon are stackable. It would have been obvious to one having ordinary skill in the art in view of Andress'026 to modify the container of Spreen as modified so the container includes a lid adapted to snap-fit onto the container for better securing the contents within the container and the container are stackable to reduce space during storage.

### ***Response to Arguments***

Applicant's arguments filed on 3/9/2007 and 10/29/2007 have been fully considered but they are not deemed to be persuasive.

Applicant's arguments with respect to Spreen on 3/9/2007 are noted. They are not persuasive because the only different between the invention of Spreen and claim 1 is an indicia indicating the position of at least one fill level which is below the respective maximum filling elevation. It is old and conventional in the art to provide a container comprises an indicia

indicating the position of at least one fill level which is below the respective maximum filling elevation as taught by Fraenkel or Shepherd.

Applicant's arguments with respect to (1) there was a recognized need for a user of an ice-cube tray to fill the tray to one or precise levels, and (2) such a user having such a need would also fill the ice-cube trays by sight are noted. They are not persuasive because the container of Spreen as modified (see above) is capable to perform the first and second predicates.

Applicant's arguments with respect to the rejection under 35 U.S.C. 101 in the remarks are noted. They are not persuasive because claim 1 has been amended to remove the filling step.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luan K. Bui whose telephone number is 571-272-4552. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

lkb  
November 22, 2007

/Luan K. Bui/  
Primary Examiner  
Art Unit 3728